

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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AO-94-26

Carl Valvo, Esq.
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One International Place, Suite 1820
Boston, MA 02110-2600

Re: Fundraiser in Public Employee's Home

Dear Mr. Valvo:

This letter is in response to your July 14, 1994 letter requesting an advisory opinion regarding the propriety of your client, an individual who is not a public employee, hosting a fundraiser at his home.

You have stated that your client's spouse is employed for compensation by the commonwealth and the home where the fundraiser is to take place is jointly owned by your client and his spouse. You have also stated that the publicly-employed spouse will not participate in making invitations, will not herself engage in any solicitation or receipt of contributions, and that her name will not be associated with the event. "In short, her sole nexus with the fundraiser is her status as joint-owner of the residential premises at which it will be held."

Your question requires consideration of M.G.L. c. 55, s. 13, which provides, in relevant part, that:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, . . . (Emphasis added).

"Indirect solicitation" is not defined in the statute. In the office's opinion, however, "the prohibition against indirect solicitation is designed to prevent a public employee from doing, in a roundabout or circuitous manner, [solicitation which] the employee can not do directly." See AO-93-10.

Since 1984 this office has advised public employees and their spouses that where a fundraiser is held in a home jointly owned by a public employee and a spouse who is not a public employee, the fundraiser is inconsistent with section 13. See AO-84-06 and AO-92-13. This advice was generally based on the premise that by allowing his (and his spouse's) home to be used for the fundraiser, the public employee spouse was or might have been seen as participating in the fundraising activity. Therefore, the office deemed such activity to be indirect solicitation. As discussed below, however, this conclusion cannot be applied in all situations, and it would appear that a fundraiser, given the facts which you have presented, would not violate section 13.

In 1984, the office was asked if the committee organized to elect a public employee could accept the offer of the committee's treasurer (the candidate's spouse) to use their jointly owned home for a fundraiser to benefit the candidate. See AO-84-06. Although no analysis was included in the opinion, the office concluded, based on the facts described in the request for an advisory opinion, that the fundraiser could not take place in the jointly owned home. The facts suggested that the public employee spouse (the candidate) was really the person who wanted to hold the fundraiser and the candidate would indirectly be soliciting if the fundraiser were to take place.

In 1992, the office advised the chairman of the Massachusetts Republican State Committee that he could not hold a fundraiser, the proceeds of which would have gone to the state committee, in his home. See AO-92-13. The Chairman held no appointed position with the commonwealth or any of its subdivisions, but his wife was employed by the General Court. The office, relying on AO-84-06, concluded that the fundraiser would be prohibited since it involved indirect solicitation on the part of the Chairman's wife.

Although AO-84-06 and AO-92-13 focus on a person's ownership interest, these opinions should not be read as making ownership interest the conclusive factor in determining compliance with section 13. Solicitation requires some overt act or word or deed which is not satisfied by a bare ownership interest in the place where the act takes place. Similarly, receipt denotes the act of accepting or taking custody of something.

Moreover, solicitation or receipt by a spouse of a public employee does not automatically implicate concerns under section 13. The statute is directed at the conduct of the public employee. The Legislature, when regulating the conduct of public employees for the purpose of preventing the appearance or reality of corruption, typically specifies when it intends the scope of the statute to include the public employee's spouse. See, e.g., G.L. c. 268B, s. 6 (" . . . [N]o public official or employee or member of such person's immediate family shall knowingly and willfully solicit or accept [certain] gifts . . .").

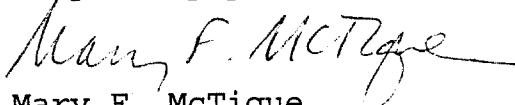
With this statutory focus in mind, we believe that there are circumstances, not considered in either AO-84-06 or AO-92-13, where the mere fact that a public employee is one of the joint owners of a home should not bar a fundraiser from

taking place in that home.¹ In particular, where (1) the public employee co-owner is not the candidate who will be benefited by a fundraiser; (2) the public employee co-owner is not an officer of the political committee which will receive the funds; (3) the public employee co-owner will not serve as a conduit of funds or instrumentality for the transfer of funds to the candidate or political committee; or (4) the facts do not otherwise suggest that the public employee co-owner would directly or indirectly use the fundraiser to solicit funds for a candidate or political committee, application of the prohibition dictated in AO-84-06 is not warranted.

It is the position of the office that the conclusion reached in AO-84-06 and AO-92-13 cannot be applied in all instances involving solicitation in a home in which a public employee has an ownership interest. The facts presented in your letter differ from the facts presented or understood to exist in either AO-84-06 or AO-92-13. The situation which you have described does not suggest that the public employee co-owner would participate in solicitation or receipt of contributions, even in an indirect manner.²

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c. 55.

Very truly yours,


Mary F. McTigue
Director

MFM/cp

¹ Similarly, the mere fact that a public employee is one of two or more persons renting, subleasing, or otherwise jointly occupying a home or apartment would not necessarily bar a fundraiser in the home or apartment.

² You state that you "have deferred posing and analyzing two separate but related questions: (a) whether, if the fundraiser at the marital home is permissible, the public employee's spouse may be present, and (b) if so whether she may engage in acts of ordinary hospitality (e.g., cleaning and preparing the house for a party, preparing and serving food and refreshments, greeting guests, mingling)." Although you have not asked for an answer at this time to these questions, we can respond generally by stating that the campaign finance law would not prohibit the spouse from being present during the fundraiser (see AO-92-13) or engaging in the "acts of ordinary hospitality" which you have described, provided she does not solicit or receive contributions.